

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EPA Region 5 Records Ctr.



275663

THE DOW CHEMICAL CO., <u>et al.</u> ,)	
)	
Plaintiffs,	)	Civil Action Nos.
	)	C-1-97-0207; C-1-97-0308; C-1-01-439
v.	)	(Consolidated Actions)
)	
ACME WRECKING CO., INC., <u>et al.</u>,	)	Judge Weber
)	
Defendants.)	
)	
THE DOW CHEMICAL CO., <u>et al.</u>,	)	UNITED STATES'
	)	RESPONSES TO DEFENDANT
Plaintiffs,	)	AERONCA, INC.'S FIRST SET OF
	)	INTERROGATORIES, REQUESTS
v.	)	FOR PRODUCTION OF
	)	DOCUMENTS, AND REQUESTS
SUN OIL COMPANY, d/b/a SUNOCO OIL	)	FOR ADMISSIONS
CORP., <u>et al.</u> ,)	
)	
Defendants.)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
AERONCA, INC., <u>et al.</u> ,)	
)	
Defendants.)	
)	

Plaintiff the United States of America ("United States") responds to the first set of interrogatories, requests for production of documents and requests for admissions of Defendant Aeronca, Inc. ("Aeronca") as follows.

GENERAL OBJECTIONS

A. The United States objects to Aeronca's discovery requests to the extent that they are overly broad and unduly burdensome. The United States further objects to Aeronca's discovery to the extent that it asks for information that is neither relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

B. The United States objects to Aeronca's discovery requests to the extent that the information sought is already in the public domain, or is in possession of Aeronca, or is readily obtainable by Aeronca from another source in a more convenient, less burdensome, and less expensive manner.

C. The United States objects to Aeronca's discovery to the extent that it seeks documents that are protected by the attorney-client privilege, work-product doctrine, joint defense privilege, environmental audit privilege, or any other privilege.

D. Where the United States provides the name of a person in response to a discovery request, the person may be contacted through undersigned counsel for the United States, unless an address for the person is given in response to the request or the response states that the address is unknown.

E. The United States objects to the instructions to Aeronca's discovery to the extent that they purport to require the United States to provide exhaustive information regarding the privileged nature of any documents, information or objects requested by any Interrogatory or Request for Production. The United States will produce a privilege log of any such documents, information or objects at a mutually convenient time in the litigation.

F. The United States' substantive responses are provided subject to all of the preceding objections and interpretations, as well as the specific objections made below, and by providing substantive responses, the United States does not intend to waive any general or specific objection. Without undertaking any obligation to do so, the United States reserves the right to supplement these responses to this and all discovery in the event that additional information is made known or becomes available to them.

G. Much of the information sought in this discovery may be contained in the responses to U.S. EPA's CERCLA Section 104(e) requests for information filed by various recipients relating to the property which is the subject of the United States' complaint, including the responses filed by Aeronca. The United States directs Aeronca to these CERCLA Section 104(e) responses in addition to providing the following information.

RESPONSES

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:

Produce all documents upon which Plaintiffs rely in support of the allegation that Aeronca arranged for disposal of hazardous substances at the Site. For purposes of this and subsequent discovery requests, "Site" shall mean the Skinner Landfill Superfund Site in West Chester, Ohio, and referred to as the "Site" in Plaintiffs' amended complaints.

RESPONSE:

Subject to continuing discovery, the United States will make the documents requested available by providing copies to Aeronca at a time mutually agreed to by counsel for the parties.

INTERROGATORY NO. 1:

List by common name all hazardous substances that Plaintiffs contend that Aeronca arranged for disposal at the Site.

RESPONSE:

The United States objects to this request to the extent that it calls for the premature disclosure of facts known and opinions held by experts. Expert reports are not required to be disclosed by the parties until September 6, 2002, after the completion of fact discovery. Without waiving this objection and subject to continuing discovery, the United States states that upon information and belief Aeronca arranged for the disposal of materials at the Site containing hazardous substances including spent potassium permanganate. Aeronca may have disposed of other hazardous substances including spent cleaning solutions identified by Aeronca as Turco 4338-C and Turco Nitradd, which are believed to contain potassium permanganate and sodium hydroxide, and, at least for Turco Nitradd, nitric acid.

INTERROGATORY NO. 2:

Separately state for each hazardous substance listed in response to Interrogatory No. 1 the detailed factual basis upon which Plaintiffs base their allegation that the substance was disposed of at the site by arrangement of Aeronca.

RESPONSE:

The United States objects to this request to the extent that it calls for the premature disclosure of facts known and opinions held by experts. Expert reports are not required to be disclosed by the parties until September 6, 2002, after the completion of fact discovery. Without waiving this objection, and subject to continuing discovery, the factual bases for the United States' response to Interrogatory No. 1 is set forth in various documents. Those documents will be made available in response to Request for Production of Documents No. 1.

REQUEST FOR ADMISSION NO. 1:

Admit that potassium permanganate was not detected at the Site or in any water flowing or migrating from the Site in sampling data gathered in the investigation of the Site or the assessment of the environmental or human health risks posed by the Site.

RESPONSE:

The United States objects to this request for admission because of its compound nature and on the grounds that it is misleading because the evidence will demonstrate that Aeronca arranged for the disposal of "spent" potassium permanganate at the Site. The United States further objects to this request for admission because under the law applicable to the United States' cost recovery claim, the United States does not have to establish that potassium permanganate was detected at the Site or in any water flowing or migrating from the Site. Thus, this request for admission is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, the United States admits that potassium permanganate was not detected at the Site or in any water flowing

or migrating from the Site in sampling data but notes that at least one of the reasons potassium permanganate was not detected at the Site was because U.S. EPA did not test for potassium permanganate at the Site or in any water flowing or migrating from the Site. Potassium permanganate is a chemical compound which breaks down over time. U.S. EPA, however, did test for the presence of at least one breakdown and degradation element of potassium permanganate, namely manganese. Manganese was detected at the Site and in water flowing or migrating from the Site. In addition, because the potassium permanganate disposed of at the Site was spent, additional hazardous substances that were detected at the Site may have been mixed with the potassium permanganate during manufacturing and disposed of at the Site.

INTERROGATORY NO. 3:

If the response to Request for Admission No. 1 is a full or partial denial, identify the document by title, author, number (if any), date of issuance, and page numbers on which potassium permanganate is shown to have been detected at the Site or in any water flowing or migrating from the Site.

RESPONSE:

The United States objects to this request because the documents containing the information regarding the fact that breakdown and degradation elements of potassium permanganate, including manganese, were detected at the Site are publicly available, easily accessible by Aeronca through the local Site document repository established by U.S. EPA, and requiring the United States to answer this request will subject it to undue burden. Without waiving these objections, the United States will make the documents requested available for inspection and copying by Aeronca at a location and time to be mutually agreed upon by counsel for the parties. Without waiving these objections, the United States states that at least the following documents contain the requested information: the 1991 Baseline Risk Assessment at Table 2-1, 5-29, and 5-33; Remedial Investigation at Tables 5.3, 5.4, 5.5, 5.8, 5.9, 5.13, 5.14, 5.15, 5.17, and 5.19.

REQUEST FOR ADMISSION NO. 2:

Admit that potassium permanganate was not identified in any document prepared as part of the investigation of the Site or the assessment of the environmental or human health risks posed by the Site as being part of, or contributing to, the risks posed by the Site.

RESPONSE:

The United States objects to this request for admission because of its compound nature and on the grounds that it is misleading because the evidence will demonstrate that Aeronca arranged for the disposal at the Site of "spent" potassium permanganate at the Site. The United States further objects to this request for admission because under the law applicable to the United States' cost recovery claim, the United States does not have to

establish that potassium permanganate was identified as being part of, or contributing to the risks posed by the Site. Thus, this request for admission is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, the United States admits that potassium permanganate was not identified in any document prepared as part of the investigation of the Site or the assessment of environmental or human health risks posed by the Site but notes that at least part of the reason potassium permanganate was not so identified is because potassium permanganate is a chemical compound that breaks down over time. U.S. EPA, however, did identify at least one breakdown and degradation element of potassium permanganate, namely manganese, in various Site investigations and risk assessments.

INTERROGATORY NO. 4:

If the response to Request for Admission No. 2 is a full or partial denial, identify the document by name, author, number (if any), date of issuance, and page numbers on which potassium permanganate is shown as being part of, or contributing to, the risks posed by the Site.

RESPONSE:

The United States objects to this request because the documents containing the information regarding the fact that breakdown and degradation elements of potassium permanganate, including manganese, addressed risks at the Site are publicly available, easily accessible by Aeronca through the local Site document repository established by U.S. EPA, and requiring the United States to answer this request will subject it to undue burden. Without waiving these objections, the United States will make the documents requested available for inspection and copying by Aeronca at a location and time to be mutually agreed upon by counsel for the parties. Without waiving these objections, the United States states that at least the following documents contain the requested information: the 1991 Baseline Risk Assessment at Tables 2-1, 5-29, and 5-33; Remedial Investigation at Tables 5.3, 5.4, 5.5, 5.8, 5.9, 5.13, 5.14, 5.15, 5.17, and 5.19;

REQUEST FOR ADMISSION NO. 3:

Admit that the remedy designed for and implemented at the Site did not include measures expressly adopted to address risks posed by the presence of potassium permanganate at the Site or in water flowing or migrating from the Site.

RESPONSE:

The United States objects to this request for admission because of its compound nature and on the grounds that it is misleading because the evidence will demonstrate that Aeronca arranged for the disposal of "spent" potassium permanganate at the Site. The United States further objects to this request for admission to the extent that it calls for the premature disclosure of facts known and opinions held by experts. Expert reports are not required to be disclosed by the parties until September 6, 2002, after the completion of fact

discovery. Finally, the United States objects to this request for admission because under the law applicable to the United States' cost recovery claim, the United States does not have to establish that the remedy designed for and implemented at the Site included measures expressly adopted to address the risks posed by potassium permanganate. Thus, this request for admission is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, the United States denies this request for admission on the grounds that remedies implemented at the Site were designed to address risks posed by hazardous substances, including but not limited to, breakdown and degradation components of potassium permanganate.

INTERROGATORY NO. 5

If the response to Request for Admission No. 3 is a full or partial denial, explain in detail, with references where appropriate to remedy design documents, the manner in which the remedy for the Site was designed to address risks posed by potassium permanganate.

RESPONSE:

The United States objects to this interrogatory because the documents sought by Aeronca are publicly available, easily accessible by Aeronca through the local Site document repository established by U.S. EPA, and requiring the United States to answer this request will subject it to undue burden. The remedy at the Site, including the landfill cap, the groundwater collection system, and the groundwater monitoring, is designed to protect human health and the environment by controlling hazardous substances, including manganese, that have been released at the Site and could migrate. Without waiving these objections, the United States will make the documents requested available for inspection and copying by Aeronca at a location and time to be mutually agreed upon by counsel for the parties.

INTERROGATORY NO. 6:

List all documents that were prepared as part of the investigation, risk assessment, choice of the remedy, and design of the remedy for the Site, including but not limited to, the remedial investigation/feasibility study, risk assessments, record of decision, remedial design, and any other document containing information on hazardous substances located at or migrating from the Site, the risks posed by the Site, alternative remedies evaluated for the Site, selection of the remedy for the Site, and design of the remedy. For each such document, provide the title, author, date of issuance, and document number (if any).

RESPONSE:

The United States objects to this interrogatory because the documents sought by Aeronca are publicly available, easily accessible by Aeronca through the local Site document repository established by U.S. EPA, and requiring the United States to answer this request will subject them to undue burden. Without waiving these objections, the United States

will make the documents requested available for inspection and copying by Aeronca at a location and time to be mutually agreed upon by counsel for the parties.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2:

Produce a copy of all documents listed in response to Interrogatory No. 6.

RESPONSE:

See response to Interrogatory No. 6 above.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3:

Produce a copy of all Consent Decrees entered into by the United States and potentially responsible parties pertaining to the Site, including, but not limited to, the Consent Decree entered by the Court on April 3, 2001, in United States v. Skinner-Morgan, No. C-1-00-424 (S.D. Ohio).

RESPONSE:

The United States objects to this discovery request because the documents requested are publicly available at the United States District Court for the Southern District of Ohio. Notwithstanding this objection, the United States will make the documents requested available for inspection and copying by Aeronca at a location and time to be mutually agreed upon by counsel for the parties.

INTERROGATORY NO. 7:

Identify with reference to each numbered discovery request all persons who assisted in the preparation of the response to the request and the compilation and production of requested documents. For each such person, provide his or her name, title, employer, business address, and business telephone number.

RESPONSE:

Scott Hansen, Remedial Project Manager, U.S. EPA Region 5 (Interrogatory 1, 3, 4, 5, and 6; Request for Admission 1, 2, and 3)

Craig Melodia, Associate Regional Counsel, U.S. EPA Region 5 (all)

Deloris Johnson, Paralegal, U.S. EPA Region 5 (compilation and production of documents)

Annette Lang, Trial Attorney, U.S. Dept. of Justice (all)

Michael J. O'Callaghan, Shumaker, Loop & Kendrick, LLP (all)

THE FOLLOWING DISCOVERY REQUESTS ARE DIRECTED TO ALL PLAINTIFFS IN THE CONSOLIDATED ACTIONS EXCEPT THE UNITED STATES. SUCH PLAINTIFFS ARE REFERRED TO BELOW AS "THE CONTRIBUTION PLAINTIFFS".

INTERROGATORY NO. 8:

State the total amount of money that the contribution plaintiffs estimate will be spent in "response costs" and "other expenses", as those phrases are used in the contribution plaintiffs' second amended complaint, including recoverable response costs incurred by the United States and the State of Ohio.

RESPONSE:

Not applicable.

INTERROGATORY NO. 9:

State the amount of money that represents the contribution plaintiffs' collective equitable share of the total "response costs" and "other expenses" as stated in response to the preceding interrogatory, and state the facts and reasoning upon which contribution plaintiffs conclude that the amount represents the contribution plaintiffs' collective equitable share.

RESPONSE:

Not applicable.

INTERROGATORY NO. 10:

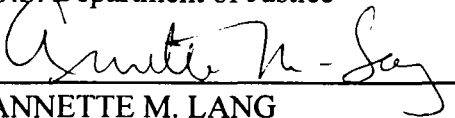
State the amount of money that the contribution plaintiffs have presently collectively spent in "response costs" and "other expenses" .

RESPONSE:

Not applicable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February 2002, I caused a true copy of the foregoing UNITED STATES' RESPONSES TO DEFENDANT AERONCA, INC'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS to be served by first-class mail, postage prepaid upon the following counsel of record:


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